

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	CASE NO. 4:18-cr-329
)	
)	
PLAINTIFF,)	JUDGE SARA LIOI
)	
vs.)	
)	MEMORANDUM OPINION AND
)	ORDER
TEQUAN RUSHTON,)	
)	
)	
DEFENDANT.)	

Before the Court is the *pro se* motion of defendant Tequan Rushton (“Rushton”) for a compassionate release due to circumstances surrounding the COVI-19 pandemic. (Doc. No. 27 [“Mot.”].) Plaintiff United States of America (the “government”) opposes the motion. (Doc. No. 28 [“Opp’n”].) For the foregoing reasons, the motion for immediate compassionate release is denied without prejudice.

I. BACKGROUND

On June 21, 2018, Rushton was charged by indictment with one count of being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2) and 2. (Doc. No. 1 [Indictment].) On August 29, 2018, pursuant to a plea agreement, Rushton entered a plea of guilty to the charge in the indictment. (8-29-2018 Minutes; Doc. No. 18 [R&R]; Doc. No. 20 [Order Adopting R&R and Accepting Guilty Plea]; and Doc. No. 21 [Plea Agreement].) On December 10, 2018, the Court sentenced Rushton to a term of imprisonment of 67 months. (12-

10-2018 Minutes; Doc. No. 25 [Judgement].) Rushton is currently serving his sentence at FCI Beckley and has a projected release date of February 7, 2023. *See* <https://www.bop.gov/inmateloc/> (last visited 5-1-2020).

In support of his request for a compassionate release, Rushton notes that certain members of his immediate family have been diagnosed with the COVID-19 virus, and that, as a result, it is “hard for me to sleep in my cell every night wondering if I will lose my family because of this virus.” (Mot. at 156.) He further states that he has been diagnosed with hypertension and post-traumatic stress disorder (“PTSD”) and is receiving mental health care, and he worries that he will also contract the virus. (*Id.*)

The government argues that Rushton’s motion should be denied because he has not exhausted his administrative remedies. (Opp’n at 162.) Rushton does not represent that he has exhausted his administrative remedies, and there is nothing in the record to indicate that he has done so.

II. DISCUSSION

The sentencing court has no inherent authority to modify an otherwise valid sentence. *United States v. Washington*, 584 F.3d 693, 700 (6th Cir. 2009). Rather, the authority of the Court to resentence a defendant is limited by statute. *United States v. Houston*, 529 F.3d 743, 748–49 (6th Cir. 2008) (citing *United States v. Ross*, 245 F.3d 577, 858 (6th Cir. 2001)). Title 18 U.S.C. § 3582(c)(1)(A) provides that courts may “reduce [an inmate’s] term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment)” where “extraordinary and

compelling reasons warrant [release],” or the prisoner’s age and other factors make release appropriate. 18 U.S.C. § 3582(c)(1)(A).

Prior to 2018, only the Bureau of Prisons (“BOP”) could move a district court under § 3582(c)(1)(A) for the compassionate release of a federal prisoner. On December 21, 2018, the First Step Act amended 18 U.S.C. § 3582(c)(1)(A) to allow prisoners to directly petition courts for compassionate release. The amendment provides prisoners with two direct routes to court: (1) file a motion after fully exhausting administrative appeals of the BOP’s decision not to file a motion for compassionate release, or (2) file a motion after “the lapse of 30 days from the receipt . . . of such a request” without a response by the warden of the prisoner’s facility. 18 U.S.C. § 3582(c)(1)(A). No exceptions to the exhaustion requirement are listed in the statute.

Rushton does not represent that he has exhausted all administrative rights to appeal the BOP’s failure to bring a motion on his behalf, or that 30 days has passed since the warden of his facility received a request from him to file such a motion. Courts are split on whether a district court may waive the exhaustion and 30-day requirement due to the exigent circumstances presented by COVID-19. *Compare United States v. Zukerman*, 16 Cr. 194 (AT), 2020 WL 1659880, at *3 (S.D.N.Y. Apr. 3, 2020) (waiving exhaustion requirement in light of COVID-19); *United States v. Colvin*, No. 3:19cr179 (JBA), 2020 WL 1613943, at *2 (D. Conn. Apr. 2, 2020) (same); with *United States v. Raia*, 954 F.3d 594, 597 (3rd Cir. 2020) (finding exhaustion requirement in § 3582 mandatory); *United States v. Alam*, No. 15-20351, 2020 WL 1703881, at *2 (E.D. Mich. Apr. 8, 2020) (collecting cases finding that “a failure to satisfy 18 U.S.C. § 3582(c)(1)(A)’s filing requirements bars defendants from filing motions for compassionate release, and that the judiciary has no power to craft an exception to these requirements for

defendants seeking release during the COVID-19 pandemic”); *see also United States v. Johnson*, No. RDB-14-0441, 2020 WL 1663360, at *2 (D. Md. Apr. 3, 2020) (holding that the “exhaustion requirements of § 3582(c)(1)(A) are jurisdictional in nature, and [the district] court may not expand its jurisdiction by waiving such requirements”).

In *Raia*, the Third Circuit ruled that the fact that the petitioner did not wait the requisite 30-day period before seeking a compassionate release from the district “present[ed] a glaring roadblock foreclosing compassionate release[.]” *Raia*, 954 F.3d at 597. In so ruling, the court explained:

We do not mean to minimize the risks that COVID-19 poses in the federal prison system, particularly for inmates like Raia [68 year old individual with diabetes and “heart issues”]. But the mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release, especially considering BOP’s statutory role, and its extensive and professional efforts to curtail the virus’s spread. *See generally* Federal Bureau of Prisons, *COVID-19 Action Plan* (Mar. 13, 2020, 3:09 PM), https://www.bop.gov/resources/news/20200313_covid19.jsp. Given BOP’s shared desire for a safe and healthy prison environment, we conclude that strict compliance with § 3582(c)(1)(A)’s exhaustion requirement takes on added—and critical—importance. And given the Attorney General’s directive that BOP “prioritize the use of [its] various statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic,” we anticipate that the exhaustion requirement will be speedily dispatched in case like this one. Memorandum from Attorney Gen. to Dir., Bureau of Prisons 1 (Mar. 26, 2020), <https://www.justice.gov/file/1262731/download>. So we will deny Raia’s motion.

Id.

The Court agrees with the reasoning and logic of the Third Circuit. In addition to a lack of any indication in the language of § 3582(c)(1)(A) that the exhaustion requirement is discretionary or may be waived, the exhaustion requirement serves the important purpose of allowing the BOP—an agency that is in a better position to understand an inmate’s health and

circumstances relative to the rest of the prison population and identify “extraordinary and compelling reasons” for release—the opportunity to address such requests in the first instance. Accordingly, the Court “will not read an exception into § 3582(c)(1) which does not exist[,] and Rushton’s motion is denied for failure to exhaust his administrative remedies. *See Johnson*, 2020 WL 1663360, at *6 (denying inmate’s motion for compassionate release for failure to exhaust administrative remedies).

Moreover, as the government notes, the BOP “began immediately reviewing all inmates who have COVID-19 risk factors, as described by the CDC, starting with inmates incarcerated at . . . to determine which inmates are suitable for home confinement.” Fed Bureau of Prisons, Home Confinement, www.bop.gov/resources/news/20200405_covid19_home_confinement.jsp, April 5, 2020 (last accessed May 1, 2020).¹ The BOP has instructed that “inmates do not need to apply to be considered for home confinement” under this directive, but “any inmate who believes they are eligible may request to be referred to Home Confinement and provide a release plan to their Case Manager.” *Id.* The fact that the BOP has already begun to identify vulnerable inmates for release to home confinement represents further proof that, at this juncture, it is in the best position to quickly consider whether Rushton should be released.

¹ According to the BOP’s website, the BOP has already increased home confinement by more than 40% since March 2020. *Id.* In fact, under § 12033(b)(2) of the Coronavirus Aid, Relief, and Economic Security Act (“CARES” Act), Pub. L. No. 116-136, enacted March 27, 2020, the Attorney General has the authority to “lengthen the maximum amount of time for which the Director [of the BOP] is authorized to place inmates in home confinement under 18 U.S.C. § 3624(c)(2)” Since March 31, 2020, the BOP has transferred 1,871 inmates to home confinement under this new authority. *See* <http://www.bop.gov/coronavirus/index.jsp> (last visited 5-1-2020).

III. CONCLUSION

For the foregoing reasons, as well as the reasons in the government's brief opposing compassionate release, Rushton's motion for a compassionate release is denied without prejudice.

IT IS SO ORDERED.

Dated: May 1, 2020



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE